

**POLITICAL OBLIGATION, CIVIL
DISOBEDIENCE AND RESISTANCE
WITHIN THE DEMOCRATIC REGIME:
ALESSANDRO PASSERIN D'ENTRÈVES'
NOTION OF THE STATE***

***OBRIGAÇÃO POLÍTICA, DESOBEDIÊNCIA
CIVIL E RESISTÊNCIA NO REGIME
DEMOCRÁTICO: A NOÇÃO DE ESTADO
DE ALESSANDRO PASSERIN D'ENTRÈVES***

Máisa Martorano Suarez Pardo
<https://orcid.org/0000-0002-6335-3677>
maisamartorano@gmail.com

Universidade Estadual de Campinas, São Paulo, Brasil

ABSTRACT *This paper examines the role that the notion of political obligation has in the thought of the Italian philosopher of politics and law Alessandro Passerin d'Entrèves (1902 – 1985), especially in its relationship with the democratic regime and forms of resistance on the part of citizens. By analyzing the author's main arguments in this regard, it seeks to demonstrate the flexibility of the author's concept of State, and the importance of philosophy as a point of intersection between morality and law, constituting itself as an instrument of phenomenological approach to the forms of human association.*

* Article submitted on: 05/06/2022. Accepted on: 04/04/2023.

Keywords: *Political obligation. Civil disobedience. Democracy. D'Entrèves. Alessandro Passerin.*

RESUMO *O artigo examina a função da noção de obrigação política no pensamento do filósofo italiano da política e do direito Alessandro Passerin d'Entrèves (1902-1985), especialmente em sua relação com o regime democrático e as formas de resistência por parte dos cidadãos. Pela análise dos principais argumentos do autor a esse respeito, o artigo procura demonstrar a flexibilidade do conceito de Estado do autor e a importância da filosofia enquanto ponto de intersecção entre a moral e o direito, constituindo-se como instrumento de abordagem fenomenológica das formas de associação humana.*

Palavras-chave: *Obrigação política. Desobediência civil. Democracia. D'Entrèves. Alessandro Passerin.*

Introduction

The history of the notion of the State is the history of the answers given to the problem of political obligation. There were authors who stated that obedience is the result of a relationship of pure force, for others the answer to the problem of obedience is the law in its factual existence, as a positive fact. Finally, the perspective that attributes to the theory of duty a fundamental role in the understanding of political relations shifts the response from obedience to the consent of individuals. This displacement puts the ultimate element of the system's validation beyond its own structure. D'Entrèves' interest in political obligation began in his first stay in Oxford (1926-1928)¹, after having spent a period in Germany (1925) in which he studied the theme of Natural Law and the work of Ernst Troeltsch (1865-1923). As a condition of his stay at the English university, he had to submit weekly papers to Balliol College rector, Alexander Dunlop Lindsey (1879-1952)² on the work of Thomas Hill Green (1836-1882), *Lectures on the Principles of Political Obligation*. The germ of all

1 The first work published on the theme by d'Entrèves is *The problem of political politics in contemporary English thinking*, in the "Rivista Internazionale di Filosofia del Diritto", 1928.

2 Author of *The Modern Democratic State* (1948), a book that fulfills at the same time a historical analysis and a critical analysis of the formation of the democratic state. Lindsay defends the thesis that there is no "State" or "democracy" in themselves. Rather, each mode of social ordering is the product of its own time and past history. At each stage, it is determined by the "operating ideals" that refer to the values of a community, and which give meaning to the various activities that unfold in it.

his later production can be found in this early period of his career that followed the conclusion of his graduation in Turin.

In the text *Obeying Whom?*³, d'Entrèves remembers from his own experience the unfolding of political philosophy as an area of knowledge in England. He recalls three different moments: the first time he was in Oxford and was coached by Lindsay and Carlyle; in the post-war period, when he returned to assume the chair of Italian studies, at the height of the Weldonian period; and finally for the conference in question (The Phillip Maurice Denecke Lecture), in 1964, at Oxford's Lady Margaret Hall. In the 1920s, d'Entrèves says there were no doubts about the importance of political philosophy as an academic discipline. When he returned in the 1940s, he reports that he found a very different climate and this can be seen reflected in the works of Iris Murdoch and Thomas Dewar Weldon – who with his work *The vocabulary of Politics* (1953) emphasized linguistic and analytical approaches. Finally, when returning in the 1960s, he noticed a change again, a “fresh breeze blowing” new airs: there was a renewed interest in political philosophy in England, symbolized in the collection of essays by Peter Laslett, *Philosophy, Politics and Society*, also published in 1962.

This collection contains the contribution of Isaiah Berlin, *Does Political Theory still exist?*, which is cited by d'Entrèves as an example of the kind of consideration that can be made when command and obedience relationships are in question. A passage from Berlin's text that d'Entrèves uses frequently is similar to Otto von Gierke's tale of the ghost of Natural Law⁴: “So long as rational curiosity exists – a desire for justification and explanation in terms of motives and reasons, and not only of causes or functional correlations or statistical probabilities – political theory will not wholly perish from the earth.” (Berlin, 2013, p. 224). This rational curiosity, which is the essence of philosophy, addresses political relations as a way of thinking about the reasons for their ways of existence. The reason asks “why should one obey the laws?”, or “why should one person obey another?”; but it also asks “who to obey?” and still, “can disobedience be a duty?”. The answer to these questions presents itself as a matrix of values, or reflects the “operating ideals” of an era. This answer, that was previously contemplated by evoking natural law, and which is the very

3 The text was presented at Oxford at the invitation of the Denecke Foundation in March 1964 and published in Italian under the title *A chi obbedire?*, in 1965.

4 In *Natural Law* (1957), d'Entrèves turns to the description of Otto von Gierke, a German jurist from the Historical School and critic of the theories of Natural Law, who reflects the its persistence and “immortal spirit”: “If it is denied entry into the body of positive law, it floats around the room. as a ghost and threatens to turn into a vampire who sucks the blood from the body of the law”. Gierke, 1934, I, p. 226. The Italian author's proposal is to deal with the ghost, “and even exorcise it”.

object of Political Philosophy, came to be exercised by ideologies understood as a political program. Democracy is the hallmark of modern natural law, a response one would say originated from liberal ideology. In any case, what guarantees the stability and legitimacy of a certain order is whether individuals adhere to the set of values, political program or ideology that supports it.

1. What is political obligation and how it is distinguished from other types of obligation?

The notion of “political obligation” refers directly to the research, within Political Philosophy, which has as its object the reasons for obedience to a given legal order; to a “State” so to speak. The main question posed in this regard is: “Why should an individual submit to the laws?”, and the answer may vary according to the understanding on what the word “State” means. Thus, when the State is conceived only as a “monopoly of force”, “political obligation” is reduced to “obedience to the law”. When, on the contrary, the power represented in the State requires, in addition to legality, a legitimacy that is not present in the legal system itself, then “political obligation” must necessarily correspond to something beyond simple obedience to the law for fear of penalty.

D’Entrèves faces the question of the definition of political obligation and its distinction from other types of obligation in different works. In short, we could think of the three types of obligations proposed by d’Entrèves as follows: “legal obligation” refers to valid norms, laws, analyzed one by one, case by case, within a given positive system; “moral obligation” refers to the individual values of each citizen; finally, the “political obligation”, refers to the set of norms existing in a given order to which a diversity of individuals are submitted because of the common value represented in it. Yet, in another way, we can think of the “political obligation” in its relation to Natural Law, conceived as a general rule that precedes positive law. In modern democracy, natural law is represented by constitutional charters, within Nation States; and the Human Rights Charter, at the international level. Whereas the “legal obligation” refers to specific laws within a larger order, which must respect the Constitution to be valid.

If we think about the issue from the duty of obedience, we could establish more clearly the differences between “legal obligation” and “political obligation” through the questions: a) “which law should I obey?”, “in which case?”; and, b) “why should I obey the laws?”. For example: if someone wants to open a trade or any business, they must observe what the specific legislation on the subject determines in order to carry out the action within the law. If they do

not comply with the law, that person must undergo the sanctions provided for the specific case of non-compliance, also determined by law. But in the case of the question “why should I obey the laws?”, one must observe whether the laws, in general, in fact respond to the established principles so that their own existence is admissible; that is, we should observe if the positive order, including the monopoly of force by the State, corresponds to the principles established by the social values which precedes positive order. Finally, “moral obligation” is of personal and intimate nature for each individual, and must not override the laws of the State, which in turn must not interfere unless in those particular cases where foul play is in action.

D’Entrèves presents his conception according to which, the State is a historical product and, consequently, its values tend to change and transform in relation to the experiences that history can present. It is a matter of recognizing and attributing to political obligation a position of autonomy in relation to the legal and moral one, which deal with two distinct types of obligation: the first refers to an external legitimization, the second to an internal one. In this sense, we can think of political obligation as a common legitimization of the order to which we submit collectively. One should look here to that “point where norms and values coincide”, to the intersection between law and morals. Thus, the legal obligation refers to the laws taken individually, to which we must submit as citizens who accept the order that allows those same laws to exist; the moral obligation refers to the internal laws and norms of individuals, whether religious or not; and, finally, political obligation refers to the very existence of the State and the legitimization of its order as a whole. It is necessary to keep in mind the two different positions assumed by the individual: as a citizen and as a moral subject. The notion of “political obligation”, in fact, induces the distinction of our duties as citizens from our duties as moral, individual beings: only in this way is it possible to halt the moralization of law, and the interference of State in morals, avoiding the accusation brought by positivists and “realists”, according to our author.

The debate is detailed in *La Dottrina dello Stato / The Notion of State*, and is in the background of his other considerations about the forms of resistance or the distinction between legality and legitimacy. But there is a concise statement of the problem in his presentation of May 1967 to a conference at the London School of Economics and Political Science, later published in the magazine “Philosophy” titled *On the nature of political obligation*, and subsequently in the “Rivista Internazionale di Filosofia del Diritto” as *Sulla natura del*

*obbligato politico*⁵. In this work d'Entrèves takes up the problem of political obligation, but favors an analytical approach, less focused on determining which authors in which times affirmed or denied the existence of a political obligation. D'Entrèves intends to answer three questions that must clarify the existence and characteristics of political obligation. The first is aimed at determining whether there is a precise definition of the word “obligation” or whether its mere statement next to the adjective “political” would not, from the outset, be an acceptance of one meaning or another among the many possible ones. Then, he tries to clarify if there are reasons to distinguish this type of “obligation” from other types (moral and legal) and, moreover, to clarify what they are. Finally, the third question seeks to explore the consequences of recognizing the existence of political obligation.

... Up till quite recently, had I been asked point-blank what sort of thing I had in mind when referring to political obligation, I would have had no hesitation in answering: well, of course, I am thinking of such questions as “What is the foundation of authority?”, or “Why should laws be obeyed?”. These questions I have always taken, and still take, to be the basic questions of political theory. I find comfort in knowing that I am not alone in believing them to be so. But of late I have come to realize (it is never too late for self criticism!) that the phrase, “political obligation”, if used as a contracted description for the obligation to obey the laws of one's country or the commands of a sovereign, raises more than one problem, and it is these problems which I would like to try and unravel, even though my answers to them have no claim to being either original or final. (D'Entrèves, 1968, p. 309)

This consideration reflects how d'Entreves was particularly engaged in the debate about political obligation⁶ that took place especially in England. The dialogue textually established with his colleague Herbert Lionel Hart – whose work *Il concetto di obbligo* had been published in 1966 in the “Rivista di Filosofia”, of Il Mulino⁷ editor – and with Professor Goodheart and other contemporaries, demonstrate this commitment. Furthermore, it is an example of the disposition for dialogue and dissent often affirmed by him as desirable in practical political experience and academic studies. In the little essay *Scopo e*

5 D'ENTRÈVES, A. P. *On the nature of political obligation* in “Philosophy”, vol. XLIII, n° 166, October 1968. And also D'ENTRÈVES, A. P. *Sulla natura del politico obbligo* in “Rivista Internazionale di Filosofia del Diritto”, n° XLIV, n°3, July-September 1967. Also in D'ENTRÈVES, A. P. *Obbedienza e resistenza in una società democratica e altri saggi*. Milano, Edizioni di Comunità, 1970 – a 2° edition was published in 2012, which demonstrates the contemporary interest the author and these topics incite.

6 A doctoral thesis presented at the London School of Economics, found during a random investigation, accounts for this specific debate between D'Entrèves and his contemporaries. See SAMOULLA FARSIDES, CALLIOPE CHRISTINA *Consent and the basis of political obligation with reference made to Thomas Hobbes and John Locke*, 1992.

7 The journal is the oldest in Italian on the subject of philosophy and continues to publish now every four months.

necessità della filosofia politica (D'Entrèves, 2005), he specifically addresses this issue when examining possible objections to his proposal:

... among the objections that I foresee there is one to which I would like to answer in advance, and it is an objection that I think I could have opposed as follows: if in your own words, political philosophy leads to a stance on political values, do we not run the risk, by introducing it as a teaching subject, of opening the door to the most varied values, to perhaps opposing ideologies, according to the tastes and inclinations of the various teachers to whom such teaching would be entrusted? To an objection of this kind ..., I would just reply: well, what's wrong? (D'Entrèves, 2005, p. 51)

This passage contains an indication to answer the first of the questions that the Italian philosopher asks himself when he examines the nature of political obligation. Does the recognition of the existence of political obligation, or the mere statement of an obligation, indicate a position in the face of the problem of obedience? The Italian recognizes that there is a promiscuous use of the terms “obligation” and “duty” by philosophers and jurists, but it is possible to identify at least two commonly adopted perspectives. There is something in the English debate that is difficult to translate, at least to Portuguese but maybe also to Italian, because there is a distinction between the terms “*ought*” and “*duty*”. The first being directed to moral propositions, more abstract, while the second seems to have a practical element more easily recognizable, such as a role to be fulfilled or the way of proceeding in a given profession. While *ought* is a modal verb and can be interpreted within the theory of duty as a moral imperative, and addresses what is *right* in a given action even though there are no clear rules on how to proceed with it; *duty* is a noun and indicates that the rules about what should be done are precise, knowable, and linked to a certain function to be performed: the duty of the police or the inspector, for example.

In any case, d'Entrèves distinguishes two ways of conceiving political obligation: as a consequence of the idea of sanction, that is, as pure force; or as the source of the sanction, which legitimizes its existence. First, he follows the path taken by Hart and analyzes Bentham's conception, which the English colleague refers to as the “Benthanian model”. The central element of this model is the idea that people obey the laws because they fear the suffering that can come from their disobedience. This idea refers to Machiavelli's thought and the doctrine of *The Reason of State*, and is opposed to the theory of duty. To d'Entrèves the latter is a conception proper of philosophers and has been evident since Socrates responded to Thrasymachus in Plato's *The Republic*. And, to illustrate this point and its special place in modern state doctrine, the author addresses Rousseau:

Force is a physical power, and I can't see what moral effect it can have. Screaming for force is an act of necessity, not of will – it is, at best, an act of prudence. In what sense can it be a duty? (...) Allow us to admit, then, that force does not create law, and that we are obliged to obey only legitimate powers (Rousseau, *Social Contract*, I, 3)

It is a difference of position in relation to the question of the State's own function that culminates, in the legal and political spheres, in the debate about the legality and legitimacy of power. From d'Entrèves' perspective, legitimacy cannot coincide with legality, the latter being necessarily subordinate to the former. Thus, law is subordinated to politics and the latter is understood as a field of action and enjoyment of power, to which all citizens of a given society must have access. In the case of those who conceive of the State as essentially a relationship of power, legitimacy is reduced to legality; that is, law – and consequently power – is legitimate just because it is a valid law within a recognizable system. The important thing here is to understand the distinction between the descriptive and the prescriptive: the difference between describing a state of affairs such as it *is*, and the statement that one or other aspect is more desirable than others.

The political obligation as defined by Bentham describes only a “factual situation”, “a descriptive proposition about the existence of commands supported by threats” (D'Entrèves, 2005, p. 88). Whereas, for the Italian, the political obligation refers to prescriptions about the duty to be a good citizen, the constitution of a good State. He is well aware that the meaning of *good citizen* or of *good State* are conditioned by time and place and is a historical and contingent product. The whole point is the defense that this fact is not enough to ignore the existence of these issues and that, for this very reason, they must be up to debate. This is the whole reason for Political Philosophy: “... in my opinion, political philosophy⁸ finds its beginning only if we admit that there may be a political obligation in this particular sense, a duty to be a good citizen and to respect the laws of one's own country and state” (D'Entrèves, 2005, p. 89). This does not mean that theories that affirm only the aspect of force cannot be called “philosophy”. If they were interpreted in this way, as a prescription

8 In the English text, interestingly, he speaks in *political theory*, not in *political philosophy*. This is particularly significant, because it apparently expands the problem of political obligation to political theory as a whole. Alternatively, one could think of his position in *The Notion of State*, which was published in the same year as this conference, according to which political theory should be guided by political philosophy, ie, by the problem of political obligation understood not as a description of a power relationship, but as an appeal for a further justification. It may well be that this change has to do with adaptations of the discourse to different audiences. But it is still ironic that he tried so hard to introduce this concept (popular for the English) under the title of Political Philosophy in Italy (and precisely in the 1960s), while reformulating it under another title for the English public.

and not as a description, as philosophy and not as “political science”, then it would be necessary to admit that in these doctrines *pure force* is synonymous with law. “A theory, which pretends to derive a “duty” of obedience from the mere possibility of enforcement, ceases to be purely descriptive. By raising force itself to a legitimating principle, it will end by enjoining unconditional surrender to the powers that be.” (D’Entrèves, 1968, p. 312).

The second problem seems more complicated. How do we distinguish political obligation from legal obligation and moral obligation? Even in Green’s text that first inspired d’Entrèves, it seems to be identified with “the moral duty to obey the laws” – an expression that represents well that idea of the intersection between law and morals. In this sense, the problem of moralization of Law reappears, which he had examined in *Natural Law*. In the most diverse classifications of obligation, from Kant to Green and even in his partner Bobbio, political obligation does not seem to take place and the distinctions of obligations appear to be limited to legal (*officia iuris* for Kant) and morals (*officia virtutis*). Considering Hobbes’s use of the term, he admits that political obligation concerns a mixed type of obligation – excluding the possibility of using the word obligation to refer to the simple exercise of force. The confusion about the possibility and the place of political obligation may be due precisely to the fact that it changes as the perspective of the State moves: if considered as a system based on force, or as a simple external legal system, or as an incarnation worthy of loyalty. In fact, in thinking about political obligation, philosophers would have asked two questions: “why should one be a citizen?” and “what should a good citizen do?”. The first one indicates the transition from the state of nature to the civil state, a place very visited especially by the philosophers of modernity – from the contractualists to Kant. The answer to it indicates a moral imperative, “the imperative which, to use Kant’s words again, demands that we “quit the state of nature, in which everyone follows his own judgment”, and unite with our fellow human beings, “subjecting (ourselves) to a public lawful external coercion, i.e. to the State.” (D’Entrèves, 1968, p. 315).

Once more, the notion of political obligation appears related to that intersection between law and morals, which is expressed at the moment when the state of nature is left and the individual becomes part of a community of beings who also rejected this “state of nature” in the name of common life and to achieve collective ends. The Italian philosopher uses three examples to illustrate the different obligations: legal, moral and political. The first example, which concerns the legal obligation, is that of the judge whose duty is to apply laws according to the legal system active in their country, regardless of their individual beliefs or values. The example of moral obligation is that of the soldier,

who, instructed to kill the enemy, refuses to disobey the commandment “*you shall not kill*”. Finally, he points to a controversy that occurred in the 1940s in the USA when a school student, whose parents were radical religious, refused to swear to the national flag. Is it a right or not to refute the oath to the flag? – this controversy is a clear indication of the problem of political obligation.

Finally, he tries to solve the third issue, which appears to be the core of the problem. “What exactly does political obligation entail? How much can it, and does it, override or contradict obligations of any other kind? This, I believe, is the real question we must face if we want to talk sense about political obligation.” (D’Entrèves, 1968, p. 316). The author realizes that it is not enough to answer *why obey*; i.e., it is not enough to indicate this transition from an individual life to the community, collective one. It is necessary to indicate *whom to obey*, to locate the point to which duty is directed, that which in fact attracts the bond of loyalty. The acceptance of the legal system, of the State as an organizing entity of social life, means accepting the whole set of precepts that establish this specific state of affairs. This implies the suspension of moral judgment, from an individual point of view – even if only for the brief moment of recognizing the value of human association. While moral obligation can lead to an explosive disruption of order, this conception of “political obligation can be a potent sleeping aid”. D’Entrèves takes up the distinction between the duty of the individual as a citizen, i.e. in the context of the state and social organization; and as a human being. It is this fundamental distinction that can prevent, according to him, both the moralization of the State and its interference in individual morality. His mind is still, and always, picturing his own experience during the years of anti-fascist resistance and in the immediate post-war period. His countrymen, “At the crossroads between obeying or violating the positive law when it seemed too unfair, they had no doubts about what their duty was.” (D’Entrèves, 2005, p. 100). But, if this is so, would not the political obligation identify with the moral obligation?

The crux of the matter lies in my view in the ambivalence of the word, obligation. To say that a man has an obligation may mean simply that he is compelled to perform, or to abstain from, certain actions, by the menace, or the likelihood, of a sanction. But it may also mean that, independently of that sanction, he has a duty to behave in a certain manner. In the first case – to resort to a distinction which is commonplace in modern philosophical jargon – obligation is used as a descriptive, in the second as a prescriptive term. Surely the phrase, political obligation – as it recurs in the language of political theory, in contrast, maybe, to that of political science – implies a prescriptive rather than a descriptive use of the word obligation. For indeed the very question, “why should laws be obeyed?” – which I take to be the basic question of political theory – is a question which refers to an ought, not to an is, to duty, not to compulsion. (D’Entrèves in Germino; Beyme, 1974, pp. 26-27)

D'Entrèves entire argumentation and defense is centered on the recognition of this *ought* that is expressed in the State, i.e. the value that the political organization represents for the individuals that compose it. Ultimately, political obligation will be conditioned by the type of society or community to which an individual belongs. It may well be that one is born in a tyrannical or dictatorial society in which obedience is a mere coercive fact. But, exactly because it is a historical product and the values that it represents contingents, the State can be reformulated and the value that it represents revised. However, this is only possible when a value prior to the law and superior to the will and individual morality is recognized in the State (in the order, in the association, in the community). The biggest highlight of d'Entrèves' proposal seems to be that, here, this possibility of change and the potential to create common values is not restricted to the specialist of the law, the envoy of God or the philosopher-king. His notion of political obligation displaces the holder of that power to the citizens; here's the meaning of the *democratic legitimacy* he claims in *The Notion of State*⁹. If democracy is to be a system of government in which the element of legitimacy is the consent of citizens, it can only be truly legitimate – and not a mere formal democracy, a legal procedure – when the values to which they submit are self-determined.

Political obligation depends on the concept we have of the State, the type of *polis* in which we live. If the State is understood only as a legal system regulated by rules and, as such, legitimized only by the monopoly of force, then there would be no need for citizen loyalty: there would only be submission. There would be no more citizens, just subjects. Political obligation arises only within the scope of *polis* where the individual is no longer just a moral subject, but a social actor, ie a citizen and an active participant in a community governed by its own rules. If the rules of the *polis* are modified, the answer to the question “why obey?” inevitably changes.

In July 1972, D'Entrèves attended the conference held by the Rockefeller Foundation, at Villa Serbelloni in Bellagio, which theme was *The open Society in Theory and Practice*¹⁰. In his intervention, *Political Obligation and the open society*, he investigates in what kind of society the political obligation, understood as the need for legitimation without the use of coercive instruments, may arise. His initial question is, “Can political obligation exist if not in an

9 Cf. pp. 149, 194, 229.

10 Conference papers are published in GERMINO, D. VON; BEYME, K. (org.) *The Open Society in Theory and Practice* Martinus Nijhoff: The Hague, 1974

open society?”¹¹. This question can be misleading, and d’Entrèves warns of the fact that his argument is not necessarily a defense of modern democracy. Rather, it is an exercise of reflection on the practical conditions necessary for the individuals to realize that sense of duty in view of the common rules to be followed. That is, it is not a defense of liberal democracy like it *is*, presented as a form of government of western nations of his time. His argument is focused on what democracy, a legitimate one, *ought to be* – an indication of “systems that, in the current use of the term, would probably not be called democratic” (D’Entrèves in Germino; Beyme, 1974, p. 26). The Italian philosopher does not intend to discuss the essence of “open society”, but by indicating the practical elements of the type of society in which political obligation may exist, he grants that the requirements of the open society can also be found on them. He starts with the reflection about the ultimate element that legitimizes power: consent is necessarily linked to decision making by *consciousness* and not by *coercion*. Then, d’Entrèves rephrases the question and indicates that the essential requirement of political obligation is freedom. Specifically, d’Entrèves refers to three types of freedom: a) positive freedom, “in the sense that consent be assured at least to the basic decisions and to the procedures by which further decisions be reached at: the great and decisive argument in favour of democracy”; b) negative freedom, “which implies not only the respect and the guarantee of the fundamental rights of man, but the possibility for each member of the society to recede from the social contract.”; c) the most important of all, without which other freedoms are not even possible: socialist freedom. If existing material conditions prevent or hinder, and even put the existence of individuals at risk, how can they be active participants, conscious citizens? D’Entrèves concludes that it is necessary to create “viable and stable institutions” that enable the emergence of a society of this kind. Supposedly, it could be born from a democratic State, in which debates between citizens and their active participation directly influenced the political, legal and social construction. In the case of a Democratic State, where citizens obligations meant more than “obedience to a command for fear of penalty or sanction”, could forms of resistance and manifestations of disobedience be instruments to verify the legitimacy of the system? In other words, could it be possible to interpret disobedience as a democratic tool that tests, in practical ways, whether the forms and values on which the political relations between the State and individuals are based remain valid?

11 The cited excerpts from the text are part of my translation work, and are published as *Obrigaç o Pol tica e Sociedade Aberta* in Cadernos de  tica e Filosofia Pol tica, USP n  35, pp. 277-282.

2. Political Obligation and Resistance

The last aspect to be addressed is the relationship between political obligation and forms of resistance. It is no longer a matter of knowing what political obligation is or how it differs from legal and moral obligation. Nor does it matter to know *whom to obey*. A new question must be answered: can disobedience be a duty? A new set of questions arises: what kind of resistance can there be in a democratic regime? Can resistance be considered legitimate in the rule of Law? In which cases?

The theme of resistance and disobedience appears in many of d'Entrèves works since the late 1960s and remains alive in the discussions he proposed until his last writings. On a piece entitled *Quando la disobbedienza è un dovere*, written for the newspaper *La Stampa* in 1980, but published only in 2002, he still shows a vigorous defense of civil disobedience. The first work that specifically addresses the issue is *Obbedienza e resistenza in una società democratica*, from 1969 – later, in 1970, he publishes a collection of essays under the same title. In 1973 he published *Legittimità e resistenza* and *Obbligo politico e libertà di coscienza*. In addition, there are several contributions to *La Stampa* that explore the topic, as for example, the 1974's article *Quando ubbidire è pericoloso*. These works are relevant both for reflecting on the problem of political obligation and for the appreciation of the way in which d'Entrèves applies his method in the analysis of contemporary situations to him. In them, the author's effort to explore the three perspectives is clear: from the facts, the law, and the values. And, by taking this approach, the author includes considerations from areas other than history, political science and sociology; for example, he alludes to experiments in psychology. Although in a limited way, it demonstrates an attempt to contemplate that methodological perspective that was already in *The Medieval Contribution (...)*. With regard to the content of the Italian philosopher's reflection, the distinction between facts and values and the delimitation of the spheres of action of the human sciences on the one hand and of philosophy on the other, of descriptive or prescriptive discourses, are of paramount importance. However, the emphasis of his approach is on the critical analysis of the relationship between laws and values, and on the distinction between the concepts of legality and legitimacy.

In his contemporary academic context, d'Entrèves identifies confusion in the use of these concepts, and recognizes disuse of the term *legitimacy*. The word itself would have, according to him, "taken an archaic sound"¹². However,

12 See "Legalità e Legittimità" in *Potere and libertà politica in una società aperta*, 2002. p. 74.

this does not mean that it has disappeared completely from the vocabulary of political theory. On the one hand, political scientists and sociologists are interested “simply to find out by what artifices those who hold power are able to make it accepted and lasting” (D’Entrèves, 2005, p. 74) – an analysis committed to facts, not to legal or valuation aspects. On the other, the Weberian conception, from the distinction of the three types of legitimacy: charismatic, traditional and rational. In this last model of rational legitimation, which is the experience of modern societies, legality and legitimacy coincide: they are the same thing.

On its turn, for the Italian philosopher, there is no doubt about the indissoluble relationship between the two notions, and the ways of conceiving and dealing with the issue of legitimacy reflect the ways of thinking and conceiving the relationships between laws, citizens and the State or *government*. To illustrate these differences, he analyzes traditions on the European continent and in the Anglo-Saxon world: the first, heir to Roman law and developed first in Weber, until its “pure” form in Kelsen; the other, derived from the British *common law*. Once again, the target of criticism is the claim of ethical neutrality, and the risks of emptying political relations and institutions whose operation becomes a mere legalistic facade. “Identifying legality with legitimacy means setting aside the underlying problems. A grain of incense is burned at the principle of popular sovereignty; it becomes a kind of *deus ex machina*, which allows us to ignore our differences as long as the law is respected and the State is conceived as the rule of Law” (D’Entrèves, 2005, p. 78). But, what happens when differences become insurmountable, or when legalized power produces wicked laws? The equivalence between legality and legitimacy is just an illusion. If under the title of legitimacy is the ultimate foundation of power, then it is not enough to identify it with the existence of a legal system. This is the fundamental difference from d’Entrèves’ point of view in relation to Weber’s proposal: “Legality and legitimacy cease to identify at the moment it is admitted that an order can be legal but unfair. The relationship that Weber spoke of is broken: it is necessary to postulate a principle of legitimacy external to the system.” (D’Entrèves, 2005, p. 80).

Therefore, the notion of *legitimacy* is the lens through which D’Entrèves analyzes the question of resistance and disobedience to the constituted power. This is the specific topic of his contribution at the Sassari Study Conference in 1971, published later in 1973 in the *Studi Ssassaresi*. In *Legittimità e Resistenza*, he examines the different types of citizens’ behavior towards the State and seeks to identify which elements distinguish them and the possibility of them being legitimate. Once again, he begins the analysis by recognizing the role of each possible approach of political and legal studies: the historian who measures

the oscillations in time between the “extreme of feudal anarchy”, and the other extreme of “the complete suffocation of the individual in the totalitarian state”; the political scientist who can identify ideological, economic and social motivations that measure the strength, success and failure of experiments. While these are concerned with *effectiveness*, to jurists concern the *legality* of the acts, whether or not they hurt the positive order. Finally, the perspective of political philosophy, in which:

The criterion of judgment is a criterion of legitimacy, in the sense that it is a question of ascertaining whether the claim of individual or collective rights can be justified or rationally justifiable before, and if necessary against the State, as well as the eventual resistance to its commands. The problem, ..., is therefore only one aspect of the broader one of political obligation; and, if this, in order to subsist, in turn presupposes the legitimacy of power, it will be a question of measuring one legitimacy against the other ... and establishing the conditions and limits of the legitimate behavior of one and the other. (D’Entrèves, 2005, p. 257)

Among the cases identified by d’Entrèves are actions of free submission, and those of more radical opposition. On the most obedient side of this scale are the *obedience by consent*, and then *formal obedience*. In the first case, obedience to the law is felt as a duty and submission to it is by conviction in the values it represents. In the second case, on the contrary, obedience is a mere habit and there is no inner conviction: the striking factor is disinterest and political apathy. In the third and fourth cases, strict obedience and total submission to the order are no longer found: *hidden evasion* may be an evolution of *formal obedience*, apathy is turned into default in the certainty of impunity, interspersed with obedience for fear of sanction; but *passive obedience* (associated to Christian martyrs) is characterized by the acceptance of obedience and disobedience, by being silent and private in the sense that it accepts the appropriate penalty in case of transgression. The other four cases (and even *passive obedience*) can be considered as those that best represent the idea of resistance in the common imagination, they are: *conscientious objection*; *civil disobedience*; *passive resistance*; and, *active resistance*.

The *conscientious objection* is characterized by the deliberate action of refusal to obey, which happens publicly and aims to proclaim adherence to principles and values. It is associated with the refusal to engage in military service, to the protests against the Vietnam war in the US and the movement against mandatory military service – popularized with the arrest of boxer Muhammad Ali in 1967, by refusing to answer when asked to embark on a mission. However, d’Entrèves points out that the notion has a broader meaning and “deserves to be extended to include all those cases in which the purpose of

“testimony” is decisive, and in which the refusal to obey a particular precept does not at all imply the refusal of all the other norms that make up a particular system.” (D’Entrèves, 2005, p. 258). Furthermore, conscientious objection is usually an individual action.

In the case of *civil disobedience*, on the contrary, the contestation necessarily has a collective character. The Italian philosopher resort to definition of the then recently published article by John Rawls, *The Justification of Civil Disobedience*¹³, and states that it is characterized by being an illegal, non-violent action, which appeals not only to individual morality, but a broader notion of justice. The greatest example is the civil rights demonstrations in the USA, from Rosa Parks to Martin Luther King – excluding armed groups. Additionally, the objective of *civil disobedience* is to perfect the system, not to destroy it. On the contrary, *passive resistance* seeks a radical change in the political system and rejects its entire structure. A notable example is India’s independence under the leadership of Gandhi and his impressive campaign of more than a decade for the expulsion of the British. This type of behavior is marked by collective actions, which openly challenge an instituted order, or even a foreign and enemy power. Any violent action is excluded. Finally, the *active resistance* is distinguished from passive by the use and call for violence. Many examples from Latin American guerrillas, to radical European separatist movements, militias in the Middle East and radicals from extreme left, for example: *Brigate Rosse* in Italy, or the Rote Armee Fraktion (RAF) in Germany – group also known as Baader-Meinhoff. The violence of these groups can be demonstrated through collective or individual actions. “Established power is here openly contested, and the way is open to the supreme and global form of political subversion commonly designated as revolution.” (D’Entrèves, 2005, p. 259).

Therefore, what distinguishes the resistance itself from the other types of behavior listed is the global challenge to the system, to the constituted power or order. The relationship with political obligation occurs because, precisely, that duty to obey and respect the order is not recognized. In other cases, the actions are directed to specific laws and political events, but there is nevertheless respect for society’s institutions and order, which they seek to improve. In other words, the instituted power is recognized as legitimate, whereas in the previous case it is seen as illegitimate – and can even be seen as an enemy threat. D’Entrèves forwards its conclusion, recovering some aspects previously presented in *Political obligation and the open society*, especially the role of autonomy conditioned

13 See volume *Civil Disobedience* organized by the American criminalist Hugo Adam Bedau in 1969, who originally published the essay – also present in *A Theory of Justice* in editions since 1972.

by the three types of freedom: liberal, positive and socialist. He then reviews the types of resistance described specifically from this perspective of political obligation and their conditions of existence. Thus, the *obedience by consent* is the ideal situation of a healthy society, because not only the instituted power is recognized as legitimate, but also the values that are embodied in it. The *formal obedience* is already a demonstration that there are problems in recognizing the legitimacy of the system, but there is no rejection to the political obligation. From the *hidden evasion*, a denial of the binding character of the order is identified. But, although this behavior corrodes the structures of the system from within, it is a type of opportunistic and private-oriented resistance. However, the author warns, “hidden evasion is a symptom of the precariousness of a certain power, and contributes powerfully to the eventual transformation of legitimate power into power based exclusively on force.” (D’Entrèves, 2005, p. 262).

In the cases of proper resistance, the Italian philosopher distinguishes those that present themselves within the system and those that present themselves as an external threat – precisely because they do not recognize the legitimacy of the instituted power. The conclusion he presents is that not only are all forms of contestation and resistance legitimate within the system, they are desirable and even a “sign of the State’s strength, not of weakness” (D’Entrèves, 2005, p. 264). The fact is that, for d’Entrèves, dissent, criticism and protest enrich the political experience, they are the very essence of the consensus and consent process that must ultimately attribute legitimate power to the State – which is otherwise supported only by force. These public and open demonstrations are much less damaging than, for example, *hidden evasion* and the *formal obedience*, according to the author. However, this open acceptance of criticism, facing dissent and trying to reach a consensus about the “common good”, of the ends to be sought, can be a remedy even for apathy and indifferent connivance.

Something that distinguishes d’Entrèves’ approach from other colleagues in the liberal field and may surprise the reader is that he does not invalidate the types of *resistance* who challenge the legitimacy of the instituted power and reject the political obligation, the order, the system. At the same time, he believes that it is not possible to treat *passive resistance* and *active resistance* from the perspective of their legitimacy within the system, precisely because it is rejected by groups that organize themselves in these actions. But, on the other hand, it is possible to observe these conflicts as one who seeks to understand the reasons for the crisis of legitimacy:

Because the hour of resistance is also the hour of truth or of the examination of conscience, and to face it there is no other way than to request credentials from the various ideologies in which men divide, clash and often end up to slaughter each other.

For if in the eyes of an impartial judge the reaction which, in the name of existing legitimacy, the established power opposes to the actions that threaten its own existence, it cannot be less justified the recourse to such actions by those who claim their necessity advocating for a new legitimacy. (D'Entrèves, 2005, p. 265)

The passage above reflects an early idea of his, according to which in face of conflicting proposals, it is a matter of attesting which finds greater legitimacy. Even in the case of armed resistance. This does not in any way mean that d'Entrèves supports violent actions; on the contrary, he is very emphatic about the role of consensus and consent, the value of rationality and agreements in political relations. Force, violence, must be the *ultima ratio*. What happens is the recognition of the historical role played by revolutions in the transformation of political and social reality. Thus, violent actions may be necessary or even inevitable if the illegitimacy and threat of constituted power are widely recognized by the individuals who make up a social body. But the new instituted power can only be truly *legitimate* if it is not imposed solely by the barrel of the rifle: there is no legitimacy in authoritarian regimes, since submission is a result of the use of brute force.

In questioning the relationship between resistance and obedience in free regimes, between the “obligation imposed by the State and the duty imposed by conscience”, he points out that the arguments with which those of his generation seek to respond to young people have lost their effectiveness. Among them, the most used is: if everyone participates in the election of political representatives, the individual or private group cannot oppose laws that are democratically deliberated and to which everyone must submit. Denied by young people and used with caution by intellectuals (whose profession is linked to dialogue), this reasoning is widely used by law enforcement and law enforcement officers. And it is this supposed prerogative of democracy that is the object to be examined. Authoritarian, democratic, absolutist, monarchical: independent of the model and organization of power, d'Entrèves points out that the history of political thought has always sought to find the holder of the ultimate title of power, and to provide justifications for its existence.

The protest of the youth is moved by challenging the effectiveness of democratic doctrine. From the new methodological instruments of sociology or political science, they indicate that precisely the legitimizing principles of the system would only be a bourgeois fantasy, in no way compatible with the actual reality of Western societies. And for d'Entrèves, the criticism of young people was not only legitimate, but well-founded. In lines similar to the ones he wrote in *Obbedienza and Resistenza (...)* and *Political Obligation and (...)*, he wonders how it would be possible to have an obligation or duty to obey

when the State is just an instrument of oppression between classes? What kind of legitimacy can there be in a society that “hides, under the pretense of the popular sovereignty and representative institutions, the predominance of a few privileged?” (D’Entrèves, 2005, p. 215). On the other hand, the author points out that, if the youth protest seek to subvert the order, to substitute one ideology for another, then they must find what sustain the legitimacy of the power that will then be instituted. Otherwise, they run the risk of walking blindly, paving the way for authoritarianism, if such power is maintained only by coercion:

Or they want to convince us that, in that future society, once revolution is conquered, the unanimity of thinking and feeling will be such as to spontaneously move all citizens, and that consequently the political obligation would no longer be properly called a obligation, because it would constitute the very wheel of human action? It seems to me that no society, except perhaps a society of saints, could ever aspire to achieve such a condition. (D’Entrèves, 2005, p. 215)

The author reveals here that logical leap from the descriptive to the prescriptive plane and, in doing so, he reveals the fantasy that is also traversed in the ideology that moves the actions of the contestants. The Italian philosopher defends the right to resistance, the decentralization of power, regional and local autonomy and greater citizen participation in decisions that affect them. But, he does not defend the use of force and violence, if not in extreme cases – as, for example, the one he experienced in the years of resistance of the *partigiani*. This is very important because for this generation, that lived through the horrors of war and totalitarianism of the fascist regime, the choice of young people to take the path of armed conflict seems unjustified. This is an effort by the author to accept criticism and promote dialogue and rationality, in an attempt to improve the system by embracing dissent.

Conclusion

Here is the limit of disobedience within a democratic regime: it is not permissible to attack the value represented in democracy, especially that of rule of law, unless one is certain to guarantee the legitimacy of the attack. On the one hand, there is recognition of the historical validity of revolutions. On the other hand, the criterion of legitimacy, which will ultimately determine the success of the revolution and differentiate it from a crime against the State, from terrorism. In any case, dialogue between the State and revolutionaries should only take place when violence is not adopted as a method. In *Quando*

*disobbedire è un dovere*¹⁴, d'Entrèves takes up some of his classifications in *Legittimità e Resistenza* to respond to Andrea Barbato's article entitled *Siamo entrati nell'età della disobbedienza*, published in *La Stampa* in 1980. The occasion that stimulated Barbato was the conflict over the Moscow Olympics and the decision of the Italian Olympic Committee to participate in the games even after the opposition of the Italian government. The government's opinion had the symbolic value of protest against the invasion of Afghanistan by the Soviet Union in 1979. The Olympic Committee had decided that the Italian team would participate in the games without official uniforms, flags and Italian anthem. What moves d'Entrèves to respond to Barbato is the list of situations he uses in his text to demonstrate that disobedience had become the rule in many public and private relations: children disobey their parents, Europe disobey America, corrupt soccer players disobey sports rules; the Olympics conflict would be "the model of chain disobedience". For the Valdostan philosopher, the situations are completely heterogeneous and difficult to compare.

On the one hand, he recognizes the feeling of Barbato and other fellow citizens who recognize obedience as a condition of civil coexistence, and call for the "restoration of obedience". "The spirit of indiscipline inherent in Italians has been joined in recent decades by a spirit of intolerance, of rejection, which has ended up transforming disobedience into a way of life, if not even a virtue." (D'Entrèves in Caddedu, 2003, p. 282). But the point is that the terms disobedience and obedience to which Barbato refers lack precision in their meaning. The call for order and obedience allow "a whole range of different accentuation, and can even be opposite at their extremes."

In order to better understand what constitutes the citizen's disobedience in relation to the State, d'Entrèves affirms that an act of disobedience presupposes two things: the existence of a precise norm about a behavior, and that this norm comes from an authority that can enact sanctions in case of disrespect. Resuming the cases identified by him in *Legittimità e Resistenza*, he asks if the obedience they intend to restore would be the *formal* kind. He rejects the possibility that *conscious obedience*, since this is the ideal, utopian form. And by examining the situation in its relationship with *hidden evasion*, in which obedience is an exception, identifies that this is the praxis that has always been active in Italy. It remains to *formal obedience*, which highlights political apathy and can ultimately create disruptions that destroy the system. In the text recalled, as already examined, he states that forms of disobedience (with

14 This text would also be published only after the author's death, in the aforementioned work of Prof. Caddedu (2003).

the exception of the armed ones) are less harmful to democracy than forms of apathetic obedience. Rather, they demonstrate its strength and health:

... I hold firm that without disobedience humanity would never have made to any place. On the contrary, I think that in some occasions it is precisely disobedience that has deserved to be called obedience, as is the case with passive obedience which, while involving the rejection of one or more single norms for reasons of principle, is nevertheless accompanied by an obedient and virile acceptance of the consequences of their refusal. (D'Entrèves in Cadeddu, 2003, p. 283)

To him, the theme of *disobedience* was not taken lightly, or as a youthful or inconsequential impulse. Rather, he dedicated his entire academic life and career to this topic and remained firm in his values until the end of his life. Disobedience, intransigence, protest, contestation: all forms of nonviolent opposition are accepted as necessary for a healthy political life. Through a conception of political obligation that constitutes itself from the relations within society through its citizens, the Italian philosopher gives motion to the doctrine of the State, and philosophy is seen as the necessary instrument of a phenomenological approach to the modes of human association.

References

- BEDAU, H. A. "Civil Disobedience". New York: Pegasus, 1969.
- BERLIN, I. "Concepts and Categories: Philosophical Essays". New Jersey: Princeton University Press, 2013.
- BOBBIO, N. "Teoria Geral da Política". São Paulo, SP: Elsevier, 2000.
- BRAVO, G. M. (org.). "Alessandro Passerin D'Entrèves (1902-1985): politica, filosofia, accademia, cosmopolitismo e 'piccola patria'". Torino: Franco Angeli, 2004.
- CADDEDU, D. "Due articoli inediti di Alessandro Passerin d'Entrèves", *Il Pensiero Politico*, Vol. XXXVI, Nr. 2, Maio-Agosto 2003, pp. 281-283.
- D'ENTRÈVES, A. P. "La Dottrina dello Stato. Elementi di analisi e di interpretazione". 3^a ed. Torino: Giapichelli, 2009.
- _____. "Legalité et Légitimité". In: *L'idée de Légitimité*, *Annales de Philosophie Politique*, VII, 1967, pp. 29-41.
- _____. "Natural Law. An Introduction to Legal Philosophy". 2^a ed. New Jersey: Transaction Publishers, 1996.
- _____. "Obbedienza e resistenza in una società democratica e altri saggi". Milano: Edizioni di Comunità, 1970.
- _____. "On the nature of political obligation", *Philosophy*, Vol. XLIII, Nr. 166, October 1968.
- _____. "Political obligation and the open society". In: GERMINO, D. Von; BEYME, K. (orgs.) *The Open Society in Theory and Practice Martinus Nijhoff: The Hague*, 1974.

- _____. “Potere e Libertà Politica in una Società Aperta”. Bologna: Il Mulino, 2005.
- _____. “The Notion of State. An Introduction to Political Theory”. Oxford: Clarendon Press, 1967 [1ª edição, e também, 1969 2ª edição].
- D’ORSI, A. “La ricezione di Federico Chabod nella cultura italiana del Novecento”. Firenze: Leo S. Olschki, 2000.
- GERMINO, D. Von; BEYME, K. (orgs.). “The Open Society in Theory and Practice Martinus Nijhoff: The Hague”, 1974.
- GIERKE, O. von. “Natural Law and the Theory of Society”. Cambridge: The University Press, 1934.
- NEDERMAN, C. J. “A Middle Path: Alexander Passerin D’Entrèves”. In: *Lineages of European Political Thought*. Washington: CUA, 2009. 375p.
- _____. “Introduction”. In: D’ENTRÈVES, A. P. *Natural Law: an Introduction to Legal Philosophy*. 2ª ed. New Jersey: Transaction Publishers, 1996.
- NOTO, S. *et al.* “Alessandro Passerin d’Entrèves Pensatore Europeo”. Bologna: Il Mulino, 2004.